

**REMARKS**

Claims 459-469 and 471-473 remain in this application.

Claim 459, and dependent claims 460-469 and 471-473, dependent thereon, have been amended to remove step (iv) of the steps performed by the program, which contains the only reference in the claims to a “meter” that “graphically depicts a quantified probability for system acceptance of buyer’s offer.” No new matter has been added by this amendment.

Applicant’s system, as recited by amended claims 459-469 and 471-473, provides an effective, reliable and cost effective electronic bargaining system that (i) enables buyers to bargain with the system in order to negotiate an optimum bargain price and (ii) enables sellers to sell or list their products by bargaining with the system to negotiate the best-offered price. This system operates as an optimized middleman between the buyer and the seller, permitting purchases and sales of goods to be transacted at prices that represent the best bargain obtained by the parties.

The system comprises a “Business Controller” (or “processor”) unit adapted to process buyer requests and to initiate a bargain process structured to provide an optimum price for both the buyer and the system. The Business Controller unit is further adapted to process seller requests and to initiate a bargain process structured to provide an optimum price offered to the seller by the system, the Business Controller being connected with a database unit that searches the database to generate a search result (and process the search results according to the buyer and seller requests).

Depending on the preferred embodiment, the system further comprises a database controller unit having all required databases such as payment database, billing database,

buyer database, seller database, and product database; and a transceiver disposed in communication with the Business Controller unit, for transmitting Business Controller generated responses to buyers and the sellers and receiving buyer and seller requests to initiate a bargain process.

**Claim Rejections – 35 USC § 112**

Claims 459-469 and 471-473 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement for containing subject matter which was not described in the specification (i.e., “new matter”). Examiner indicated that the specifications do not contain any written description that “the system calculates and displays a ‘quantified probability’ as argued by the Applicant.”

Applicant respectfully disagrees with Examiner’s contention that the “quantified probability” display is new matter; however, in the interest of moving prosecution along, applicant has amended independent claim 459, and dependent claims 460-469 and 471-473, dependent thereon, removing all reference to the above noted “quantified probability” display.

Additionally, the Examiner has further indicated that, with regards to the steps performed by the program, the Examiner is “uncertain whether step (iv) has been claimed in the correct order.” Applicant respectfully disagrees with Examiner’s contention that there exists an uncertainty as to whether step (iv) is claimed in the correct order; however, in the interest of expediting prosecution of this application, independent claim 459, and dependent claims 460-469 and 471-473, dependent thereon, have been amended to remove step (iv).

In light of the above noted amendments, it is respectfully submitted that the Examiner's rejections have been obviated. Accordingly, reconsideration of the rejection of claims 459-469 and 471-473 under 35 U.S.C. 112, first paragraph, is respectfully requested.

**Claim Rejections – 35 USC § 103**

Claims 459 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US Patent 5,794,207) in view of Miller (Miller, Michael. *The Complete Idiot's Guide to Online Auctions*. Que. 1999. pp. 1-331).

Walker discloses a method and apparatus for effectuating bilateral *buyer-driven commerce*. The Walker method allows prospective buyers of goods and services to communicate a binding purchase offer *globally* to potential sellers. Potential sellers may then conveniently search for relevant buyer purchase offers, and for sellers potentially to bind a buyer to a contract based on the buyer's purchase offer. In a preferred embodiment, the apparatus of the Walker invention includes a controller which receives binding purchase offers from prospective buyers. The controller makes purchase offers available *globally* to potential sellers. Potential sellers then have the option to accept a purchase offer and thus bind the corresponding buyer to a contract. The method and apparatus of the present invention have applications on the Internet as well as conventional communications systems such as voice telephony. It is submitted that Walker does not teach bargaining or negotiating structured to provide an optimum price mutually agreed to by both buyer and seller.

Miller is a guide to "online auctions" that are defined (by the Miller reference) as being an attempt to "coax" potential buyers into bidding "just a little bit more" for a piece

of merchandise up for bid, where the bidding is executed by special auction software on an auction website (see Miller page 8). The bidding by potential buyers is against other potential buyers, and the buyer offering the highest bid ultimately obtains the merchandise.

Examiner indicated that it would have been obvious to one of ordinary skill in the art to have “modified Walker by incorporating a graphical display, as disclosed by Miller, allowing for a buyer to monitor their status within the sale process and the probability of the sale proceeding to completion.”

As noted supra, Walker does not teach bargaining structured to reach a purchase price that is mutually agreed to by both the buyer and the seller. Rather, Walker teaches a method where potential buyers (who are interested in obtaining a particular item of merchandise) communicate their purchase offers globally. Once communicated, potential sellers can view the various purchase offers for the merchandise and select accordingly. Presumably the seller will select the buyer with the highest purchase offer, binding that selected buyer to a purchase agreement to purchase the merchandise.

By contrast, applicant’s system, as recited by amended claims 459-469 and 471-473, teaches a method where buyers and sellers bargain to obtain a mutually agreed upon purchase price, where the system serves as a “middleman” in the bargaining process. Therefore, rather than *merely* publishing purchase offers as taught by Walker, applicant’s system enables buyers and sellers to determine a purchase price (for a particular item of merchandise) by mutual agreement. Advantageously, by bargaining to reach a purchase price (rather than *merely* selecting from proposed purchase prices as taught by Walker),

there is an increased likelihood that both the buyer and the seller will be satisfied with the item's ultimate purchase price.

Additionally, as noted supra, claims 459-469 and 471-473 have been amended to remove the requirement that applicant's system comprises a "quantified probability" display.

It is also noted that claims 460-469 and 471-473 represent preferred embodiments of the system recited by independent claim 459 and are dependent thereon.

Therefore, modification of Walker to incorporate a graphical display, as disclosed by Miller, would not produce applicant's system as described in amended claims 459-469 and 471-473. For reasons discussed supra, the resulting system would not enable potential buyers and sellers to bargain for a purchase price. Accordingly, reconsideration of the rejection of claims 459 under 35 USC 103(a) as being unpatentable over Walker in view of Miller is respectfully requested.

Claims 460-470 and 471-473 were rejected under 35 U.S.C. 103(a) as being unpatentable over Walker and Miller, as in claim 459, and in further view of Examiner's Official Notice.

With regards to claim 460, the Examiner has indicated that it would have been obvious to one of ordinary skill in the art to have modified Walker and Miller by incorporating "methodologies directed to ensure authenticity and appraisal value of a potential purchase" thereby "ensuring that the potential purchase item is as advertised and priced by the seller."

Regarding claims 461-469 and 471-473, the Examiner has indicated that it would have been obvious to one of ordinary skill in the art to have modified Walker and Miller by incorporating a method by which “to monitor the status of a shipment, as disclosed by Miller, allowing the purchaser to remain informed about the possible arrival date of said purchase.” In addition, the Examiner has indicated that it would have been obvious to have modified Walker, Miller and Official Notice by “incorporating traditional advertising and promotional methodologies, as are old and well known, to entice customers to engage to further purchases.”

As noted supra, claims 460-469 and 471-473 depend from currently amended claim 459, which is submitted to be patentable for the reasons set forth above. Inasmuch as claims 460-469 and 471-473 contain all the limitations of independent, amended claim 459, it is submitted that these dependent claims are also patentable over Walker, Miller and Official Notice.

Accordingly, reconsideration of the rejection of claims 460-469 and 471-473 under 35 USC 103(a) as being unpatentable over Walker, Miller and Official Notice is respectfully requested.

**Conclusion**

In view of the amendments to the claims and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Allowance of present claims 459-469 and 471-473 is therefore earnestly solicited.

Respectfully submitted,  
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